

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

SHEILA PORTER

Plaintiff,

v.

ANDREA CABRAL, SUFFOLK COUNTY
SHERIFF'S DEPARTMENT and SUFFOLK
COUNTY

Defendant.

Civil Action No.04-11935-DPW

**SHEILA PORTER'S MOTION TO DEFER
FILING OF MOTION FOR ATTORNEYS' FEES**

Plaintiff Sheila J. Porter ("Mrs. Porter") hereby moves to defer the deadline for filing her Motion for Attorneys' Fees until the end of this litigation, i.e., 30 days after the time to file an appeal has elapsed, or, if an appeal is taken, 30 days after the First Circuit issues a mandate in this matter. As grounds therefore, Mrs. Porter states as follows:

1. On January 19, 2006, the jury in this matter returned a verdict in favor of Mrs. Porter.
2. On January 23, 2006, the Court issued a Judgment for Mrs. Porter (1) against Sheriff Cabral and the Suffolk County Sheriff's Department ("SCSD"), jointly and severally, for compensatory damages in the amount of \$360,000 with post-judgment interest, attorneys' fees and costs as provided by law, and (2) against Sheriff Cabral for punitive damages in the amount of \$250,000 with postjudgment interest, attorneys' fees and costs as provided by law.
3. 42 U.S.C. § 1988(b) provides that "the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs . . ."

4. Fed. R. Civ. P. 54(d)(2)(B) provides that a motion for attorneys' fees must be filed within 14 days of the entry of judgment. On February 1, 2006, the Court granted Mrs. Porter's Motion for Extension of Time and ordered that the Motion for Attorneys' fees is due on February 27, 2006.

5. On February 2, 2006, defendants filed a Motion for a New Trial. Mrs. Porter's Opposition is due on February 16th. If this motion is denied, Mrs. Porter expects that defendants will appeal. If so, it would be inefficient to litigate the issue of attorneys' fees while an appeal is pending. If the fees issue is litigated now and the First Circuit lets the verdict stand, Mrs. Porter would have to submit additional briefing related to attorney time spent litigating the appeal. Moreover, if the verdict is overturned, of course, there would be no attorneys' fees issue at all.

6. Thus, there is no pressing reason to determine the amount of attorneys' fees Mrs. Porter is entitled to at this time. Mrs. Porter suggests that this issue be deferred until within 30 days after the time to file an appeal has expired, or, if an appeal is taken, within 30 days after the First Circuit issues a mandate in this matter. Staying the Motion for Attorneys' Fees will postpone this issue until it is ripe. In addition, it will give the parties additional time to confer on attorneys' fees.¹

WHEREFORE Mrs. Porter respectfully requests that the Court grant her motion and defer the deadline for filing her Motion for Attorneys' Fees until within 30 days after the time has expired to file a Notice of Appeal without such a filing, or within 30 days after the First Circuit issues a mandate disposing of this matter.

¹ To date defendants have refused to even confer on attorneys' fees, and they do not assent to this Motion. If this Motion is granted, Mrs. Porter will renew her request to confer so that a mutual compromise can be reached without involving the Court. *See Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) (parties should make all attempts to avoid a second major litigation on attorneys' fees).

Respectfully submitted,

SHEILA PORTER

By her attorneys,

/s/ David S. Schumacher

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Dated: February 13, 2006

CERTIFICATION UNDER LOCAL RULE 7.1

I, David S. Schumacher, hereby certify that counsel for Sheila Porter conferred with counsel for the Suffolk Defendants in a good faith attempt to resolve or narrow the issues in this motion prior to its filing.

Dated: February 13, 2006

/s/ David S. Schumacher

David S. Schumacher

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on February 13, 2006.

/s/ David S. Schumacher

David S. Schumacher